

## ASHBY & GEDDES

ATTORNEYS AND COUNSELLORS AT LAW  
500 DELAWARE AVENUE  
P. O. BOX 1150  
WILMINGTON, DELAWARE 19899

TELEPHONE  
302-654-1888  
FACSIMILE  
302-654-2067

March 4, 2008

The Honorable Joseph J. Farnan  
United States District Court  
844 N. King Street  
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: Sepracor, Inc. v. Dey, L.P. and Dey, Inc.  
C.A. No. 06-113-JJF (Consolidated)

Dear Judge Farnan:

In the transmittal declaration filed with its Reply Brief in Support of its Motion to Consolidate the Dey and Barr Cases (D.I. 257), Sepracor attached copies of a single letter and a single email to create the impression that it has not been dragging its feet in this matter, but instead has been working as diligently as Dey to schedule expert depositions in a timely fashion. *See* Sepracor's Reply Brief (D.I. 256 at 5 ("both parties proposed dates in early February for expert depositions, and as is often the case, both parties were unable to take the depositions on these early dates)(emphasis in original)). To enable the Court to draw its own conclusion about whether Sepracor has in fact cooperated with Dey in a good faith effort to schedule expert depositions in this matter, we submit a complete set of the parties' correspondence on the issue.

Respectfully,

/s/ *John G. Day*

John G. Day

JGD/nml  
188780.1

cc: Jack B. Blumenfeld, Esquire (via electronic mail)  
Elizabeth A. Leff, Esquire (via electronic mail)  
Preston K. Ratliff II, Esquire (via electronic mail)  
Jack M. Stover, Esquire (via electronic mail)  
Todd R. Walters, Esquire (via electronic mail)

**FLH FROMMER LAWRENCE & HAUG LLP**

Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

January 2, 2008

**Elizabeth A. Leff**  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Susan Dadio, Esq.  
Barbara Webb Walker, Ph.D.  
Buchanan Ingersoll & Rooney PC  
1737 King Street, Suite 500  
Alexandria, VA 22314-2727

Jayson R. Wolfgang  
Buchanan Ingersoll & Rooney PC  
One South Market Square  
213 Market Street, 3<sup>rd</sup> Floor  
Harrisburg, PA 17101-2121

Re: Sepracor Inc. v. Dey, L.P. and Dey, Inc.  
Civil Action Nos. 06-113-(JJF)

Counsel:

I have just received an e-mail from Dr. Newton requesting a date certain for his deposition. As you will recall, I sent Susan a letter on November 19, 2007, proposing deposition dates for Dey's experts. I never received a response. These dates have now been rendered moot by the new Scheduling Order.

Dr. Newton can be available for deposition in New York on January 24, 2008. Please let me know if this is acceptable. Because of Dr. Newton's schedule, we request that you respond by 5:00 p.m. January 8, 2008. Should we not hear from you by that time, we will go to the Court.

Very truly yours,

Elizabeth A. Leff

**Paul Hastings**

Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55th Street  
First Floor  
New York, NY 10022  
telephone 212-318-6000 • facsimile 212-319-4090 • [www.paulhastings.com](http://www.paulhastings.com)

Atlanta  
Beijing  
Brussels  
Chicago  
Frankfurt  
Hong Kong  
London  
Los Angeles  
Milan  
New York  
Orange County  
Palo Alto  
Paris  
San Diego  
San Francisco  
Shanghai  
Tokyo  
Washington, DC

(212) 318-6055  
[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)

January 8, 2008

**VIA E-MAIL AND FACSIMILE**

Elizabeth A. Leff, Esq.  
Frommer Lawrence & Haug LLP  
1667 K. Street, NW  
Washington, DC 20006

Re: *Sepracor Inc. v. Dey, L.P., et al,*  
Civil Action No. 1:06-cv-113-JJF

Dear Elizabeth:

This concerns your January 2, 2008 letter to Ms. Dadio and Mr. Wolfgang. We are unavailable to take Dr. Newton's deposition on January 24, 2008. Please propose additional dates for his deposition.

Very truly yours,



Preston K. Ratliff II  
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

PKR:nir

cc: Via Facsimile

Richard D. Kirk, Esq.  
Steven J. Balick, Esq.



Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

January 8, 2008

**Elizabeth A. Leff**  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

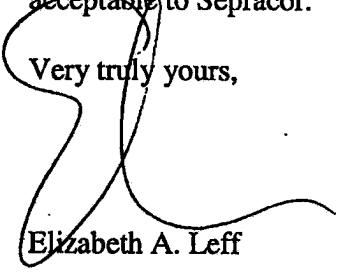
Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action Nos. 06-113-(JJF)

Dear Preston:

This will respond to your letter of this afternoon regarding your unavailability to take Dr. Newton's deposition on January 24, 2008. As I indicated in my letter of January 2, 2008, Dr. Newton's schedule during the next two and a half months is very tight. Dr. Newton can be available on January 23 or 25, 2008. Please let me know if either of these two dates is acceptable to Sepracor.

Very truly yours,

  
Elizabeth A. Leff



Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

January 14, 2008

Elizabeth A. Leff  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action Nos. 06-113-(JJF)

Dear Preston:

I just received a telephone call from Dr. Newton inquiring about the date for his deposition. Dey has offered January 23, 24 or 25, 2008. Sepracor rejected January 24, 2008, last week.

When we spoke on the telephone last week, I explained to you that the week of January 21, 2008, is the only week Dr. Newton has available during the expert discovery period due to prior commitments. As you will recall, expert discovery was initially scheduled to be completed in December. Dr. Newton set his calendar with that in mind.

Please respond as soon as possible and no later than noon tomorrow as the proposed dates are only two weeks away.

Very truly yours,

Elizabeth A. Leff

# Paul Hastings

Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55th Street  
First Floor  
New York, NY 10022  
telephone 212-318-6000 • facsimile 212-319-4090 • [www.paulhastings.com](http://www.paulhastings.com)

Atlanta  
Beijing  
Brussels  
Chicago  
Frankfurt  
Hong Kong  
London  
Los Angeles  
Milan  
New York  
Orange County  
Palo Alto  
Paris  
San Diego  
San Francisco  
Shanghai  
Tokyo  
Washington, DC

(212) 318-6055  
[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)

January 15, 2008

**VIA E-MAIL AND FACSIMILE**

Elizabeth A. Leff, Esq.  
Frommer Lawrence & Haug LLP  
1667 K. Street, NW  
Washington, DC 20006

Re: *Sepracor Inc. v. Dey, L.P., et al,*  
Civil Action No. 1:06-cv-113-JJF

Dear Elizabeth:

This concerns your January 14, 2008 letter and voicemail today requesting that Sepracor take Dr. Newton's deposition next week.

Unfortunately, Sepracor's counsel has several obligations in this case (e.g., an opposition brief in the Barr case due January 25, 2008 and a responsive Markman brief in the Breath case due January 28, 2008) as well as in other matters that do not allow it to take Dr. Newton's deposition next week.

If Dr. Newton is unavailable during the remaining two months of the expert discovery period, Sepracor is willing, as an exception, to take Dr. Newton's deposition shortly after the March 13, 2008 close of expert discovery. Otherwise, please propose additional dates for his deposition during the discovery period.

Very truly yours,



Preston K. Ratliff II  
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

PKR:

cc: Richard D. Kirk, Esq.  
Steven J. Balick, Esq.



Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

January 16, 2008

Elizabeth A. Leff  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

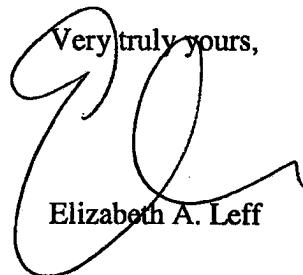
**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action Nos. 06-113-(JJF)

Dear Preston:

Dr. Newton can be available for deposition March 13, 2008, in our offices in New York. Please confirm this date is acceptable to Sepracor.

Very truly yours,  
  
Elizabeth A. Leff



Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

January 18, 2008

Elizabeth A. Leff  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

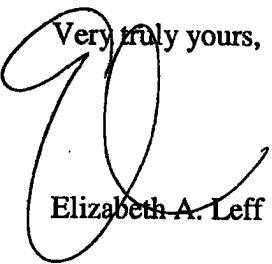
Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action Nos. 06-113-(JJF)

Dear Preston:

Dr. Wright is available for deposition on February 25, 2008, at 9:00 a.m. in our offices in Washington, DC. Dr. Armstrong is available for deposition on February 21, 2008, at 9:00 a.m. in our offices in Washington, DC. Please let me know if these dates are acceptable to Sepracor. I am still waiting to hear from Drs. Leach and Ahrens regarding their availability. Sepracor has not yet confirmed the proposed March 13, 2008 date for Dr. Newton's deposition.

Finally, I would also appreciate receiving proposed dates for the depositions of Sepracor experts.

Very truly yours,

  
Elizabeth A. Leff

**FLH FROMMER LAWRENCE & HAUG LLP**

Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

January 24, 2008

**Elizabeth A. Leff**  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

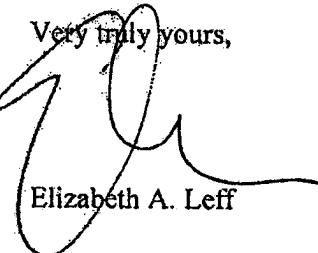
Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action Nos. 06-113-(JJF)

Dear Preston:

This will follow-up on my letter of January 18, 2008. You have not responded to that letter which proposes deposition dates for three of Dey's experts and requests confirmation from Sepracor that these dates are acceptable. As I am sure you can appreciate, experts are very busy people and need to calendar a date certain. Please confirm the offered dates immediately.

Additionally, Sepracor has not proposed any dates for the depositions of its experts. As you know expert depositions must be completed by March 13<sup>th</sup>. We do not want to have to squeeze multiple depositions in at the end of the discovery period as occurred in fact discovery. Please provide us with proposed dates for the depositions of Sepracor's experts.

Very truly yours,



Elizabeth A. Leff



Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

January 25, 2008

Elizabeth A. Leff  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action Nos. 06-113-(JJF)

Dear Preston:

Dr. Ahrens will be available for deposition on February 7, 2008 at 9:00 a.m. in our Washington, DC offices. Please let me know whether this date is acceptable to Sepracor no later than noon on Tuesday, January 29, 2008.

Very truly yours,

Elizabeth A. Leff



Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

January 28, 2008

Elizabeth A. Leff  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

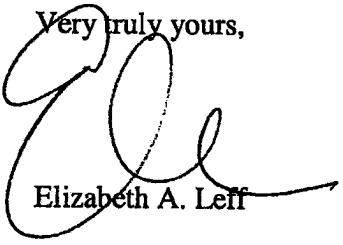
Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action Nos. 06-113-(JJF)

Dear Preston:

Dr. Leach is available for deposition on March 7, 2008, at 9:00 a.m. The deposition will take place at our offices in Washington, DC.

Dey has now provided Sepracor with a proposed deposition date for each of its experts. Sepracor has neither responded to these proposals nor proposed any dates for the depositions of its experts. As you are aware, expert discovery must be completed by March 13, 2008. Please confirm the dates offered by Dey and propose deposition dates for each of Sepracor's experts immediately.

Very truly yours,



Elizabeth A. Leff



Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

January 29, 2008

Elizabeth A. Leff  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

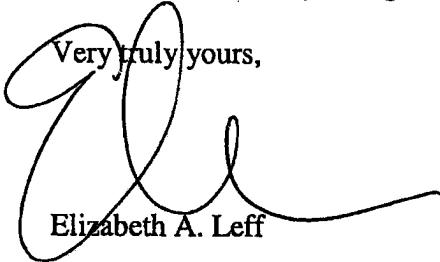
Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action Nos. 06-113-(JJF)

Dear Preston:

By letters to you dated January 16, 2008, January 18, 2008, January 24, 2008, January 25, 2008, and January 28, 2008, Dey has proposed dates for the depositions of its experts and requested confirmation from Sepracor that the proposed dates are acceptable. You have not responded to any of these letters. Furthermore, Dey has requested Sepracor propose dates for its experts. Sepracor has failed to do so. Eleven experts must be deposed prior to March 13, 2008. As I have stated in previous letters, Dey does not want to bunch up all of these depositions at the end of the discovery period as occurred with fact discovery. Accordingly, if Dey does not get a response on the dates it offered and does not receive a proposed date for the deposition of each of Sepracor's experts by 3:00 p.m. tomorrow, January 30, 2008, we will seek relief from the Court.

Very truly yours,



Elizabeth A. Leff

**Leff, Elizabeth**

---

**From:** Leff, Elizabeth  
**Sent:** Thursday, January 31, 2008 8:10 AM  
**To:** 'Ratliff, Preston K.'  
**Subject:** RE: Letter from Elizabeth Leff

Preston:

I will call you at 3pm.

Very truly yours,  
Elizabeth

---

**From:** Ratliff, Preston K. [mailto:[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)]  
**Sent:** Wednesday, January 30, 2008 11:38 PM  
**To:** Leff, Elizabeth  
**Subject:** RE: Letter from Elizabeth Leff

Elizabeth,

I am generally available after 3 pm tomorrow. What works for you?

Very truly yours,

Preston

---

**From:** Leff, Elizabeth [mailto:[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)]  
**Sent:** Wednesday, January 30, 2008 10:49 AM  
**To:** Ratliff, Preston K.  
**Subject:** RE: Letter from Elizabeth Leff

Preston:

When are you available for a telephone conference? Since you are out of the office today can we set a time tomorrow?

Very truly yours,  
Elizabeth

---

**From:** Ratliff, Preston K. [mailto:[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)]  
**Sent:** Wednesday, January 30, 2008 8:12 AM  
**To:** Leff, Elizabeth; Robinson, Gail  
**Cc:** [jday@ashby-geddes.com](mailto:jday@ashby-geddes.com); [sbalick@ashby-geddes.com](mailto:sbalick@ashby-geddes.com)  
**Subject:** RE: Letter from Elizabeth Leff

Elizabeth,

I have your letters regarding expert depositions. As you know, the expert deposition period in the Dey case overlaps with that of the Breath case. We are working towards a suitable schedule for the experts, many of whom will be deposed in both cases. I am out of the office today, but I suggest that we have a telephone conference to work out an appropriate schedule. At any rate, I will also send you some

information tonight on deposition dates.

Very truly yours,

Preston

---

**From:** Robinson, Gail [mailto:GRobinson@flhllaw.com]  
**Sent:** Tuesday, January 29, 2008 2:54 PM  
**To:** Ratliff, Preston K.  
**Cc:** jday@ashby-geddes.com; sbalick@ashby-geddes.com; Leff, Elizabeth  
**Subject:** Letter from Elizabeth Leff

Per Elizabeth Leff, I am forwarding the attached to you.

Gail Robinson

**Frommer Lawrence & Haug LLP**  
1667 K Street, NW  
Suite 500  
Washington, DC 20006  
(202) 292-1541

=====

This message originates from the law firm of Frommer Lawrence and Haug LLP. It contains information that may be confidential or privileged and is intended only for the individual or entity named above. No one else may disclose, copy, distribute, or use the contents of this message. Unauthorized use, dissemination, and duplication is strictly prohibited, and may be unlawful. All personal messages express views solely of the sender, which are not to be attributed to Frommer Lawrence and Haug LLP, and may not be copied or distributed without this disclaimer. If you receive this message in error, please notify us immediately at firm@flhllaw.com or call (212) 588-0800.

---

\*\*\*\*\*  
IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.  
\*\*\*\*\*

\*\*\*\*\*  
This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at  
[www.paulhastings.com](http://www.paulhastings.com).

=====

This message originates from the law firm of Frommer Lawrence and Haug LLP. It contains information that may be confidential or privileged and is intended only for the individual or entity named above. No one else may disclose, copy, distribute, or use the contents of this message. Unauthorized use, dissemination, and duplication is strictly prohibited, and may be unlawful. All personal messages express views solely of the sender, which are not to be attributed to Frommer Lawrence and Haug LLP, and may not be copied or distributed without this disclaimer. If you receive this message in error, please notify us immediately at [fhlh@fhlh.com](mailto:fhlh@fhlh.com) or call (212) 588-0800.

---

\*\*\*\*\*

IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.

\*\*\*\*\*

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at [www.paulhastings.com](http://www.paulhastings.com).

**FLH FROMMER LAWRENCE & HAUG LLP**

Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

www.flhlaw.com  
New York  
Tokyo

January 31, 2008

**Elizabeth A. Leff**  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

**Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.***  
**Civil Action No. 06-113-(JJF) (consolidated)**

Dear Preston:

This will follow-up on our telephone conference today regarding the scheduling of expert depositions.

**Dey's Witnesses**

Sepracor has confirmed the following previously offered dates:

1. Dr. Wright	February 25, 2008, in Washington, DC
2. Dr. Leach	March 7, 2008, in Washington, DC
3. Dr. Newton	March 13, 2008, in New York

Sepracor has declined to accept February 21, 2008, offered for Dr. Armstrong and February 7, 2008, offered for Dr. Ahrens. In light of this, Dey has offered February 14 or 15, 2008, for Dr. Ahrens and February 22, 2008, for Dr. Armstrong. Please advise as soon as possible as these dates are only a few weeks away.

**Sepracor's Witnesses**

Today, Sepracor offered Mr. Thwait for February 28, 2008, which Dey has accepted. You stated the location will be either New York or Washington, DC. Sepracor also offered March 6, 2008, for Dr. Mossberg and February 15 or 20, 2008, for Dr. Agrawal. Dey will get back to you shortly regarding those dates. Sepracor's proposal of March 13 or 14, 2008 for Dr. Page will not work. Dey requested you propose alternative dates.

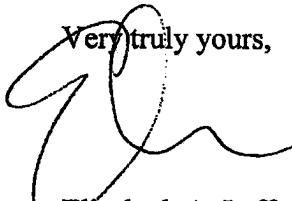
With regard to Drs. Berger and Calhoun, you stated that you did not have any dates to offer and that you did not think they were available until sometime in April – weeks after the close of

Preston K. Ratliff II  
January 31, 2008  
Page 2

expert discovery. Dey requested Sepracor propose dates during the discovery period for those depositions.

Please let me know immediately if the above does not comport with your understanding of our telephone conference.

On a separate issue, you have not responded to Sam Desai's letter of January 29, 2008, relating to the production of Sepracor's claim construction briefs in the *Sepracor v. Breath* case. Breath has indicated that it will provide Dey with its claim construction briefs. Elizabeth Brenner-Leifer also stated that Breath has no objections to Sepracor providing its claim construction briefs to Dey as long as information regarding Breath's manufacturing process and the '289 patent are redacted. In his letter, Mr. Desai requested that you provide Dey with Sepracor's position by noon today. You have not responded. In light of the above information, if we do not hear from you by 5:00 p.m. on Friday, February 1, 2008, we will file a motion with the Massachusetts Court.

Very truly yours,  
  
Elizabeth A. Leff



Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

February 1, 2008

Elizabeth A. Leff  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action No. 06-113-(JJF) (consolidated)

Dear Preston:

This will follow-up on our telephone conversation yesterday regarding expert depositions.

Sepracor proposed March 6, 2008, for the deposition of Dr. Mossberg and February 20, 2008, for the deposition of Dr. Agrawal. Dey confirms both of these dates. Please advise whether these depositions and Mr. Thwait's, which has been confirmed for February 28, 2008, will be in New York or Washington, DC.

Sepracor has not yet responded to the dates offered for Dr. Ahrens and Dr. Armstrong. Please advise immediately so that Drs. Ahrens and Armstrong are able to calendar their respective date. As I have previously stated, they are both busy individuals and their calendars are filling up.

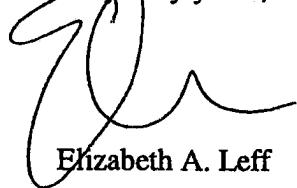
Sepracor has not proposed any dates for Drs. Calhoun and Berger, other than to say that they are not available until April, nor has it proposed an acceptable date for Dr. Page's deposition. Please propose dates prior to March 13, 2008 for each of these individuals.

Dey has been proposing dates for expert depositions since January 2, 2008. Sepracor has responded only twice, each time rejecting the offered dates approximately one week after the offer was made. Sepracor's delay in responding to Dey's proposed dates has been unfair to Dey's experts who are busy professionals with tight schedules. Moreover, Sepracor's rejection of every date offered prior to the last week in February has reduced the time during which all expert depositions in this case must be taken from a nine week period to a three week period. Sepracor's suggestion that the schedule be extended once again is not acceptable to Dey. Please consider accepting and proposing dates during the first part of February. If we do not get

Preston K. Ratliff II  
February 1, 2008  
Page 2

reasonable proposals for the deposition dates of Drs. Page, Calhoun and Berger by noon on Tuesday, February 5, 2008, we will seek the assistance of the Court.

Very truly yours,

A handwritten signature in black ink, appearing to read "ELIZABETH A. LEFF".

Elizabeth A. Leff

## Communications Litigation

---

**From:** Leff, Elizabeth  
**Sent:** Tuesday, February 05, 2008 12:01 PM  
**To:** Communications Litigation  
**Subject:** FW: Letter from Elizabeth Leff

---

**From:** Ratliff, Preston K. [mailto:[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)]  
**Sent:** Tuesday, February 05, 2008 11:50 AM  
**To:** Leff, Elizabeth  
**Subject:** RE: Letter from Elizabeth Leff

Elizabeth,

I have your February 1, 2008 letter regarding expert depositions and am waiting to hear back from Sepracor's experts. In any event, I will get back to you before 2 pm today.

Very truly yours,

Preston

---

**From:** Robinson, Gail [mailto:[GRobinson@fhlaw.com](mailto:GRobinson@fhlaw.com)]  
**Sent:** Friday, February 01, 2008 3:05 PM  
**To:** Ratliff, Preston K.  
**Cc:** [jday@ashby-geddes.com](mailto:jday@ashby-geddes.com); [sbalick@ashby-geddes.com](mailto:sbalick@ashby-geddes.com); Leff, Elizabeth  
**Subject:** Letter from Elizabeth Leff

Per Elizabeth Leff, I am forwarding the attached to you.

**Gail Robinson**  
Frommer Lawrence & Haug LLP  
1667 K Street, NW  
Suite 500  
Washington, DC 20006  
(202) 292-1541

=====

This message originates from the law firm of Frommer Lawrence and Haug LLP. It contains information that may be confidential or privileged and is intended only for the individual or entity named above. No one else may disclose, copy, distribute, or use the contents of this message. Unauthorized use, dissemination, and duplication is strictly prohibited, and may be unlawful. All personal messages express views solely of the sender, which are not to be attributed to Frommer Lawrence and Haug LLP, and may not be copied or

distributed without this disclaimer. If you receive this message in error, please notify us immediately at firm@flhlaw.com or call (212) 588-0800.

\*\*\*\*\*  
IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.  
\*\*\*\*\*

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at [www.paulhastings.com](http://www.paulhastings.com).

# Paul Hastings

Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55th Street  
First Floor  
New York, NY 10022  
telephone 212-318-6000 • facsimile 212-319-4090 • [www.paulhastings.com](http://www.paulhastings.com)

Atlanta  
Beijing  
Brussels  
Chicago  
Frankfurt  
Hong Kong  
London  
Los Angeles  
Milan  
New York  
Orange County  
Palo Alto  
Paris  
San Diego  
San Francisco  
Shanghai  
Tokyo  
Washington, DC

(212) 318-6055  
[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)

February 5, 2008

**VIA E-MAIL AND FACSIMILE**

Elizabeth A. Leff, Esq.  
Frommer Lawrence & Haug LLP  
1667 K. Street, NW  
Washington, DC 20006

Re: Sepracor Inc. v. Dey, L.P., et al,  
Civil Action No. 1:06-cv-113-JJF

Dear Elizabeth:

This is in response to Dey's January 31, 2008 and February 1, 2008 letters regarding expert depositions.

As I explained during our telephone conversation on Thursday, January 31, 2008, the expert deposition period in the Dey case overlaps with the Markman proceedings and expert deposition period in the *Sepracor v. Breath* case, which is pending in the District of Massachusetts. Sepracor therefore is working towards a deposition schedule that takes into account Sepracor's obligations in the Dey and Breath cases, and is least burdensome to the experts who will be deposed in both cases.

Regarding Dey's expert witnesses, Sepracor did not decline to take Dr. Armstrong's deposition on February 21, 2008. I told you that because February 21 coincides with the Markman hearing in the Breath case, Sepracor would have to check to see if someone is available. Sepracor believes that someone is available to take Dr. Armstrong's deposition on one of the offered dates (February 21 or 22) and will confirm tomorrow. As for Dr. Ahrens, we are not available to take his deposition during the offered dates. Please let us know if Dr. Ahrens has any availability in March.

Regarding Sepracor's expert witnesses, Mr. Thwaite will be made available for deposition on February 28, 2008 in New York City. As for Dr. Agrawal, contrary to Dey's January 31, 2008 letter, I told you that Dr. Agrawal may be available February 20, 2008, but I would need to confirm. I have checked with Dr. Agrawal and he is not available February 20, 2008. Please let us know if Dey is available to take his deposition on February 15, 2008. Also, contrary to Dey's January 31, 2008 letter, I told you that I had available dates for Drs. Berger and Calhoun. You, however, said that you were not interested in hearing the dates because they were after the current close of expert discovery. We have reached out to Drs. Berger and Calhoun again for additional dates and hope to hear back shortly.

*Paul Hastings*

Elizabeth A. Leff, Esq.  
February 5, 2008  
Page 2

Further, please reconsider whether Dey can take Dr. Page's deposition on Friday, March 14. Dey's only stated reason for not taking Dr. Page's deposition is that March 14 is after (i.e., one day after) the current close of expert discovery. As I explained during our telephone conversation, Dr. Page is traveling from the United Kingdom for his deposition in the Breath case that week and we are trying to avoid having Dr. Page make multiple trips to the United States.

Finally, I propose that we have another telephone conference Friday morning to discuss any outstanding expert deposition scheduling issues.

Very truly yours,



Preston K. Ratliff II  
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Via E-Mail

Jack B. Blumenfeld, Esq.  
Steven J. Balick, Esq.

*File  
Correspondence*

**Leff, Elizabeth**

---

**From:** Ratliff, Preston K. [prestonratliff@paulhastings.com]  
**Sent:** Wednesday, February 06, 2008 10:59 PM  
**To:** Leff, Elizabeth  
**Subject:** Sepracor v. Dey

Elizabeth,

Further to Sepracor's February 5, 2008 letter regarding expert depositions, Sepracor agrees to take Dr. Armstrong's deposition on February 22, 2008 in Washington, D.C.

Very truly yours,

Preston

---

Preston K. Ratliff II, Litigation Associate | Paul, Hastings, Janofsky & Walker LLP | 75 East 55th Street, New York, NY 10022 | direct: 212 318 6055 | main: 212 318-6000 | direct fax: 212 230 7742 | [prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com) | [www.paulhastings.com](http://www.paulhastings.com)

---

\*\*\*\*\*  
IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.  
\*\*\*\*\*

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at [www.paulhastings.com](http://www.paulhastings.com).



Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

February 12, 2008

Elizabeth A. Leff  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action No. 06-113-(JJF) (consolidated)

Dear Preston:

This will confirm your e-mail advise that Sepracor will take the deposition of Dr. Armstrong on February 22, 2008, at our offices in Washington, DC. I believe Dr. Ahrens is the only Dey expert whose deposition has not been scheduled. This is because Sepracor has rejected all dates Dr. Ahrens has made available in February for deposition. We have contacted Dr. Ahrens and asked him to provide additional dates he is available for deposition in March. I will let you know when I hear from him.

I am disappointed in the lack of candor in your last letter. You did indeed offer Dr. Agrawal to Dey for deposition on February 20, 2008, which Dey accepted. Your statement that you "have checked with Dr. Agrawal and he is not available February 20, 2008," is not exactly accurate. It is not that Dr. Agrawal told you he is not available, rather you appear to have offered February 20, 2008, to Breath and when Breath chose February 20, 2008, you rescinded your offer to Dey. Sepracor brought cases against both Breath and Dey. It is inappropriate for Breath to continually delay the Dey case because of obligations it has in the Breath case.

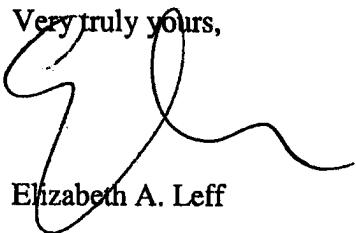
With respect to Drs. Berger and Calhoun, you told me they were only available in April. I reminded you that the deadline for expert discovery is March 13, 2008, and, therefore, told you I was not interested in dates in April. Please provide dates for Drs. Berger and Calhoun in March.

With respect to Dr. Page, we are unavailable to take his deposition on March 14, 2008. Discovery was to be completed before that date and, therefore, schedules have been filled with other matters. Please offer additional dates.

Preston K. Ratliff II  
February 12, 2008  
Page 2

You have stated that Mr. Thwaite's deposition will be in New York, but have not identified the place. Please let me know where in New York Mr. Thwaite's deposition will be. Finally, you have not indicated where Dr. Mosberg's March 6, 2008 deposition will be. Please advise.

Very truly yours,



Elizabeth A. Leff

Leff, Elizabeth

---

**From:** Leff, Elizabeth  
**Sent:** Tuesday, February 12, 2008 2:23 PM  
**To:** 'Ratliff, Preston K.'  
**Subject:** RE: Sepracor v Dey

Dear Preston:

Please let me know what time you are available to speak tomorrow. As I had difficulty getting you on the phone during our last pre-set teleconference, I would appreciate it if you would call me.

Very truly yours,  
Elizabeth Leff

---

**From:** Ratliff, Preston K. [mailto:[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)]  
**Sent:** Tuesday, February 12, 2008 2:13 PM  
**To:** Leff, Elizabeth  
**Subject:** RE: Sepracor v Dey

Elizabeth,

I am not available today to discuss expert depositions, however, I have some availability tomorrow afternoon. Also, I have your letter of today regarding expert depositions and will provide a response. In the meantime, I see that Dey has declined our offer of February 15, 2008 for Dr. Agrawal's deposition. We will therefore let Dr. Agrawal know that he no longer has to hold that date open.

Very truly yours,

Preston

---

**From:** Leff, Elizabeth [mailto:[ELeff@flhllaw.com](mailto:ELeff@flhllaw.com)]  
**Sent:** Tuesday, February 12, 2008 11:03 AM  
**To:** Ratliff, Preston K.  
**Subject:** Sepracor v Dey

Preston:  
Are you free some time today to discuss the scheduling of depositions for the above referenced case?

Very truly yours,  
Elizabeth

=====

This message originates from the law firm of Frommer Lawrence and Haug LLP. It contains information that may be confidential or privileged and is intended only for the individual or entity named above. No one else may disclose, copy, distribute, or use the contents of this message. Unauthorized use, dissemination, and duplication is strictly prohibited, and may be unlawful. All personal messages express views solely of the sender, which are not to be attributed to Frommer Lawrence and Haug LLP, and may not be copied or distributed without this disclaimer. If you receive this

message in error, please notify us immediately at  
firm@flhllaw.com or call (212) 588-0800.

---

\*\*\*\*\*  
IRS Circular 230 Disclosure: As required by U.S.  
Treasury Regulations governing tax practice, you are  
hereby advised that any written tax advice contained  
herein was not written or intended to be used (and cannot  
be used) by any taxpayer for the purpose of avoiding  
penalties that may be imposed under the U.S. Internal  
Revenue Code.  
\*\*\*\*\*

This message is sent by a law firm and may contain  
information that is privileged or confidential. If you  
received this transmission in error, please notify the  
sender by reply e-mail and delete the message and any  
attachments.

For additional information, please visit our website at  
[www.paulhastings.com](http://www.paulhastings.com).

**Leff, Elizabeth**

---

**From:** Leff, Elizabeth  
**Sent:** Wednesday, February 13, 2008 3:40 PM  
**To:** 'Ratliff, Preston K.'  
**Subject:** RE: Sepracor v Dey

Preston:  
I will expect your call at 1:30 tomorrow.

Very truly yours,  
Elizabeth Leff

-----Original Message-----

From: Ratliff, Preston K. [mailto:[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)]  
Sent: Wednesday, February 13, 2008 3:19 PM  
To: Leff, Elizabeth  
Subject: Re: Sepracor v Dey

Elizabeth,

My meeting is running late. How about tomorrow at 1:30 pm?

Preston

----- Original Message -----

From: Leff, Elizabeth <[ELeff@flhllaw.com](mailto:ELeff@flhllaw.com)>  
To: Ratliff, Preston K.  
Sent: Wed Feb 13 10:43:23 2008  
Subject: Sepracor v Dey

Dear Preston:

You stated in an e-mail yesterday that you are available today for a telephone conference relating to expert deposition scheduling. I have not heard back from you regarding the times you are available today for such a telephone conference. Please let me know as soon as possible what time you propose we have this call.

Very truly yours,  
Elizabeth Leff

Elizabeth A. Leff  
Frommer Lawrence & Haug LLP  
1667 K Street, NW, Suite 500  
Washington, DC 20006  
Phone: (202) 292-1536  
Fax: (202) 292-1531  
[ELeff@FLHLLaw.com](mailto:ELeff@FLHLLaw.com)

=====

This message originates from the law firm of Frommer Lawrence and Haug LLP. It contains information that may be confidential or privileged and is intended only for the individual or entity named above. No one else may disclose, copy, distribute, or use the contents of this message. Unauthorized use, dissemination, and duplication is strictly prohibited, and may be unlawful. All personal messages express views solely of the sender, which are not to be attributed to Frommer Lawrence and Haug LLP, and may not be copied or distributed without this disclaimer. If you receive this message in error, please notify us immediately at [firmlaw@flhllaw.com](mailto:firmlaw@flhllaw.com) or call (212) 588-0800.

\*\*\*\*\*  
IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.  
\*\*\*\*\*

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at [www.paulhastings.com](http://www.paulhastings.com).



FROMMER LAWRENCE &amp; HAUG LLP

Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

February 14, 2008

Elizabeth A. Leff  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action No. 06-113-(JJF) (consolidated)

Dear Preston:

This will follow-up on our telephone conference this afternoon. I requested a telephone conference with you on February 12, 2008, to discuss the scheduling of expert depositions. You responded that you were not available but that you would have availability on February 13, 2008. On February 13, 2008, you sent me an e-mail stating that your meeting was running late and suggested today at 1:30 p.m.

You began by suggesting that we suspend expert depositions in light of Sepracor's motion to consolidate. I stated that Dey was opposing Sepracor's motion to consolidate and that Dey would not agree to suspend depositions. You suggested that since there is no trial date set there would be no reason not to extend the deposition period into April. I responded that as a courtesy, Dey would be willing to extend the deposition schedule by a few weeks but would not agree to extend it past the end of March. You said you needed to discuss the issue with your client.

Despite the fact that this teleconference was for the purpose of discussing deposition scheduling, you had no additional dates to offer Dey for the depositions of Sepracor's experts. Indeed, you stated that Drs. Page, Calhoun and Berger were not available until April. You did not propose another date for Dr. Agrawal. Dey has requested dates for the depositions of Sepracor's experts since the first week of January. We have expressed our concern about Sepracor's delay in providing dates and about Sepracor's failure to propose deposition dates prior to the close of expert discovery.

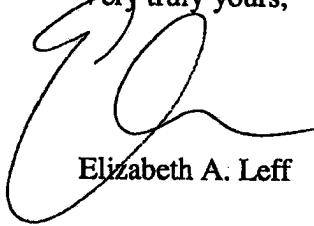
With the exception of Dr. Ahrens, the deposition of each of Dey's experts has been scheduled. I told you that Dr. Ahrens would be available for deposition on February 29, 2008. You told me that Sepracor was unable to take Dr. Ahrens' deposition on that date. This is the third date

Preston K. Ratliff II  
February 14, 2008  
Page 2

offered for Dr. Ahrens (Dey previously offered February 8, 2008 and February 15, 2008) that Sepracor has rejected.

Please let me know immediately if this does not comport with your understanding of our conversation.

Very truly yours,

A handwritten signature in black ink, appearing to read "ELA".

Elizabeth A. Leff

cc: Steven Balick, Esq.

## Communications Litigation

---

**From:** Leff, Elizabeth  
**Sent:** Friday, February 15, 2008 8:44 AM  
**To:** Communications Litigation  
**Subject:** FW: Letter from Elizabeth Leff

---

**From:** Ratliff, Preston K. [mailto:[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)]  
**Sent:** Friday, February 15, 2008 8:38 AM  
**To:** Leff, Elizabeth  
**Cc:** JBlumenfeld@MNAT.com; [sbalick@ashby-geddes.com](mailto:sbalick@ashby-geddes.com)  
**Subject:** RE: Letter from Elizabeth Leff

Elizabeth,

This concerns your February 14, 2008 letter regarding our telephone conversation yesterday. Your summary of our conversation is inaccurate, and I will send you a letter later today explaining why.

By the way, please copy Sepracor's Delaware counsel, Jack Blumenfeld, on all correspondence.

Very truly yours,

Preston

---

**From:** Robinson, Gail [mailto:[GRobinson@fhlaw.com](mailto:GRobinson@fhlaw.com)]  
**Sent:** Thursday, February 14, 2008 5:00 PM  
**To:** Ratliff, Preston K.  
**Cc:** [sbalick@ashby-geddes.com](mailto:sbalick@ashby-geddes.com); Leff, Elizabeth  
**Subject:** Letter from Elizabeth Leff

Per Elizabeth Leff, I am forwarding the attached to you.

Gail Robinson

Frommer Lawrence & Haug LLP  
1667 K Street, NW  
Suite 500  
Washington, DC 20006  
(202) 292-1541

=====

This message originates from the law firm of Frommer Lawrence and Haug LLP. It contains information that may be confidential or privileged and is intended only for the individual or entity named above. No one else may disclose, copy, distribute, or use the contents of this message. Unauthorized use, dissemination, and duplication is strictly prohibited, and

may be unlawful. All personal messages express views solely of the sender, which are not to be attributed to Frommer Lawrence and Haug LLP, and may not be copied or distributed without this disclaimer. If you receive this message in error, please notify us immediately at firm@flhllaw.com or call (212) 588-0800.

---

\*\*\*\*\*  
IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.  
\*\*\*\*\*

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at [www.paulhastings.com](http://www.paulhastings.com).

# Paul Hastings

Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55th Street  
First Floor  
New York, NY 10022  
telephone 212-318-6000 • facsimile 212-319-4090 • [www.paulhastings.com](http://www.paulhastings.com)

Atlanta  
Beijing  
Brussels  
Chicago  
Frankfurt  
Hong Kong  
London  
Los Angeles  
Milan  
New York  
Orange County  
Palo Alto  
Paris  
San Diego  
San Francisco  
Shanghai  
Tokyo  
Washington, DC

(212) 318-6055  
[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)

February 15, 2008

**VIA E-MAIL AND FACSIMILE**

Elizabeth A. Leff, Esq.  
Frommer Lawrence & Haug LLP  
1667 K. Street, NW  
Washington, DC 20006

Re: Sepracor Inc. v. Dey, L.P., et al,  
Civil Action No. 1:06-cv-113-JJF

Dear Elizabeth:

This concerns Dey's February 14, 2008 letter, which attempts to summarize the parties' telephone conference yesterday regarding expert depositions.

As an initial matter, Dey's letter fails to mention that Sepracor (not Dey) proposed yesterday's telephone conference. Specifically, on Tuesday, February 5, 2008, Sepracor proposed that the parties have a telephone conference on Friday, February 8, 2008 to discuss expert depositions (see attached letter at Tab A). Dey ignored Sepracor's proposal and did not agree to have a conference until this week.

Regarding yesterday's telephone conference, Sepracor asked Dey whether it would agree to defer expert depositions until after the *Markman* proceedings or, at least, until the Court ruled on Sepracor's motion to consolidate the Dey and Barr cases. Dey refused to discuss extending expert depositions by more than one or two weeks, and told Sepracor that it would need to seek relief from the Court to extend the current close of expert discovery.

In addition, contrary to Dey's letter, Sepracor did not tell Dey that Dr. Page is not available until April. Sepracor asked whether Dey had reconsidered taking Dr. Page's deposition on March 14, 2008, i.e., the day after the current close of expert discovery. Dey refused to take Dr. Page's deposition.

Further, despite Sepracor's prior request that Dey provide deposition dates in March for Dey's expert Dr. Ahrens (see attached letter at Tab A), Dey offered a date in February for Dr. Ahrens's deposition. Sepracor told Dey that it was unavailable to take Dr. Ahrens's deposition on the offered day because Sepracor has a deposition in the Breath case on that same day.

**Paul Hastings**

Elizabeth A. Leff, Esq.  
February 15, 2008  
Page 2

Finally, Dey's letter states that it has requested deposition dates for Sepracor's experts since "the first week of January." I am unaware of any such request, and Dey's letter fails to cite any supporting correspondence.

Very truly yours,



Preston K. Ratliff II  
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Via E-Mail

Jack B. Blumenfeld, Esq.  
Steven J. Balick, Esq.



Washington DC  
1667 K Street NW  
Washington, DC 20006  
Telephone: (202) 292-1530  
Fax: (202) 292-1531

[www.flhlaw.com](http://www.flhlaw.com)  
New York  
Tokyo

February 19, 2008

**Elizabeth A. Leff**  
[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)

**VIA E-MAIL**

Preston K. Ratliff II  
Paul, Hastings, Janofsky & Walker LLP  
Park Avenue Tower  
75 East 55<sup>th</sup> Street  
First Floor  
New York, NY 10022

Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*  
Civil Action No. 06-113-(JJF) (consolidated)

Dear Preston:

This is in response to the letter you sent at 11:59 p.m. on Friday, February 15, 2008. I respond to correct the inaccuracies in that letter.

First, Dey did not ignore your suggestion that the parties discuss expert deposition scheduling on Friday, February 5, 2008. Rather, Dey's counsel attempted to get a third date from Dr. Ahrens prior to holding that conversation so that the telephone conference could be constructive. Dey was in fact able to obtain a date from Dr. Ahrens which it offered and which Sepracor immediately rejected during our telephone conference on February 13. Despite requesting the telephone conference on February 5, on February 13 Sepracor had no dates to offer for its four unscheduled expert witness depositions, but used the telephone conference in an attempt to delay expert depositions and the case, by proposing that expert depositions not be held until after Markman proceedings. Dey understands this to mean upon the entry of a Markman order by the Court, which would likely cause a four to six month delay in the depositions (and the case.)

Second, you minimize Dey's attempts to compromise when you state that Dey "refuse[d] to discuss extending expert depositions by more than one or two weeks." Dey specifically stated it would agree to extend expert depositions to the end of March, which is a period of approximately two and a half weeks. The record shows Dey has given Sepracor many extensions throughout this case, including agreeing to Sepracor's request for a one week extension the night before Dr. Page's supplemental report was to be filed.

Third, during the February 13, 2008 conference call, Dey reiterated once again that it was unavailable to take Dr. Page's deposition on March 14 because, relying on the March 13 date for the close of depositions reflected in the scheduling order, counsel had made other commitments. You responded that Dr. Page "would not return to the U.S. again in March." Perhaps incorrectly,

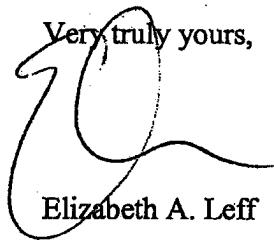
Preston K. Ratliff II  
February 19, 2008  
Page 2

Dey understood this statement to mean that Dr. Page would be available in April. However, it appears from your letter that Sepracor meant Dr. Page would not be available for deposition until May or even later.

Fourth, with respect to Dr. Ahrens, who is an extremely busy clinician and academician, Dey proposed a third date in February for his deposition. As with the other dates offered for him, this date was within the period set out in the scheduling order for taking expert depositions. Sepracor rejected that date immediately. Sepracor now states that the reason the date is not acceptable is that Sepracor has a deposition in the Breath case. It is surprising that a single deposition in the Breath case on that day would prevent Sepracor from using one of the many attorneys in the three law firms it has retained in this matter, to take the deposition.

Finally, Dey stands corrected with respect to the date on which Dey felt it necessary to start requesting Sepracor to propose dates for the depositions of Sepracor's experts. Dey's January 2, 2008 letter, to which you responded, simply proposed a date for Dr. Newton's deposition. Dey proposed dates for its experts' depositions believing, apparently incorrectly, that Sepracor would respond in kind. It was not until January 18, having offered dates for three of its five experts and having received no proposals from Sepracor for its experts' depositions that Dey felt compelled to request dates from Sepracor. Sepracor did not respond to that letter, (nor to several follow-up letters on the same issue,) until January 30, when Sepracor sent an e-mail suggesting a telephone conference on January 31 to which Dey readily agreed.

Very truly yours,

A handwritten signature in black ink, appearing to read "ELIZABETH A. LEFF".

Elizabeth A. Leff

cc: Steven J. Balick, Esq.  
Jack B. Blumenfeld, Esq.

**Leff, Elizabeth**

---

**From:** Ratliff, Preston K. [prestonratliff@paulhastings.com]  
**Sent:** Thursday, February 21, 2008 5:14 PM  
**To:** Leff, Elizabeth  
**Cc:** jblumenfeld@mnat.com; sballck@ashby-geddes.com  
**Subject:** RE: Sepracor v Dey

Elizabeth,

We plan to start Dr. Armstrong's deposition tomorrow, February 22, 2008 at 9:30 a.m. The deposition will be held at Paul Hastings' D.C. offices.

Very truly yours,

Preston

---

**From:** Leff, Elizabeth [mailto:[ELeff@flhlaw.com](mailto:ELeff@flhlaw.com)]  
**Sent:** Wednesday, February 20, 2008 5:23 PM  
**To:** Ratliff, Preston K.  
**Subject:** Sepracor v Dey

Dear Preston:

This will confirm that Dr. Armstrong's deposition will take place at your offices in Washington DC on Friday February 22 beginning at 9am.

Very truly yours,  
Elizabeth Leff

**Elizabeth A. Leff**  
**Frommer Lawrence & Haug LLP**  
1667 K Street, NW, Suite 500  
Washington, DC 20006  
Phone: (202) 292-1536  
Fax: (202) 292-1531  
[ELeff@FLHLaw.com](mailto:ELeff@FLHLaw.com)

---

This message originates from the law firm of Frommer Lawrence and Haug LLP. It contains information that may be confidential or privileged and is intended only for the individual or entity named above. No one else may disclose, copy, distribute, or use the contents of this message. Unauthorized use, dissemination, and duplication is strictly prohibited, and may be unlawful. All personal messages express views solely of the sender, which are not to be attributed to Frommer Lawrence and Haug LLP, and may not be copied or distributed without this disclaimer. If you receive this message in error, please notify us immediately at [fhlh.com](mailto:fhlh.com) or call (212) 588-0800.

---

\*\*\*\*\*  
IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.  
\*\*\*\*\*

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at [www.paulhastings.com](http://www.paulhastings.com).

**Leff, Elizabeth**

---

**From:** Ratliff, Preston K. [prestonratliff@paulhastings.com]  
**Sent:** Sunday, February 24, 2008 11:30 AM  
**To:** Leff, Elizabeth  
**Cc:** Blumenfeld, Jack; sbalick@ashby-geddes.com  
**Subject:** Sepracor v. Dey

Elizabeth,

We plan to start Professor Wright's deposition tomorrow, February 25, 2008 at 9:30 a.m. The deposition will be held at Paul Hastings' D.C. offices.

Very truly yours,

Preston

---

Preston K. Ratliff II, Litigation Associate | Paul, Hastings, Janofsky & Walker LLP | 75 East 55th Street, New York, NY 10022| direct: 212 318 6055 | main: 212 318-6000 | direct fax: 212 230 7742 | [prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com) | [www.paulhastings.com](http://www.paulhastings.com)

---

\*\*\*\*\*  
IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.  
\*\*\*\*\*

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at [www.paulhastings.com](http://www.paulhastings.com).

**Leff, Elizabeth**

---

**From:** Leff, Elizabeth  
**Sent:** Wednesday, February 27, 2008 8:08 AM  
**To:** 'Ratliff, Preston K.'  
**Cc:** Desai, Sam; Rualo, Tess  
**Subject:** Sepracor v Dey

Dear Preston:

This will confirm that the deposition of Edward Thwait will take place tomorrow, February 28 at our offices in New York. The deposition will begin at 9:00 am.

Very truly yours,  
Elizabeth Leff

**Elizabeth A. Leff**  
**Frommer Lawrence & Haug LLP**  
1667 K Street, NW, Suite 500  
Washington, DC 20006  
Phone: (202) 292-1536  
Fax: (202) 292-1531  
[ELeff@FLHLaw.com](mailto:ELeff@FLHLaw.com)

**Leff, Elizabeth**

---

**From:** Hovden, Jeffrey  
**Sent:** Monday, March 03, 2008 3:59 PM  
**To:** 'Clancy, Quinn E.'  
**Cc:** Ratliff, Preston K.; Leff, Elizabeth  
**Subject:** RE: Sepracor v. Dey - 540013-503

Dear Mr Clancy,

thanks for your response - Jeff Hovden

-----Original Message-----

**From:** Clancy, Quinn E. [mailto:[quinnclancy@paulhastings.com](mailto:quinnclancy@paulhastings.com)]  
**Sent:** Monday, March 03, 2008 3:58 PM  
**To:** Hovden, Jeffrey  
**Cc:** Ratliff, Preston K.; Leff, Elizabeth  
**Subject:** FW: Sepracor v. Dey - 540013-503

Dear Mr. Hovden:

As a courtesy in response to your recent request to change venue for Dr. Leach's deposition, Sepracor will take Dr. Leach's deposition this Friday, March 7, 2007, starting at 9 a.m. at Paul Hastings' New York Office, located at 75 East 55th St., New York, NY 10022.

Quinn Clancy

---

Quinn E. Clancy, Litigation Associate | Paul, Hastings, Janofsky & Walker LLP | 75 East 55th Street, New York, NY 10022 | direct: 212 318 6206 | main: 212 318 6000 | direct fax: 212 230 7708 | [quinnclancy@paulhastings.com](mailto:quinnclancy@paulhastings.com) | [www.paulhastings.com](http://www.paulhastings.com)

----- Original Message -----

**From:** Hovden, Jeffrey <[JHovden@flhllaw.com](mailto:JHovden@flhllaw.com)>  
**To:** Ratliff, Preston K.  
**Cc:** Leff, Elizabeth <[ELeff@flhllaw.com](mailto:ELeff@flhllaw.com)>  
**Sent:** Mon Mar 03 10:06:23 2008  
**Subject:** RE: Sepracor v. Dey - 540013-503

Dear Mr Ratliff,

Just following up on the e-mail message below. So that we may make the arrangements for Dr Leach, please let me know Sepracor's position at your earliest convenience. thanks, Jeff Hovden

Dear Mr Ratliff,

I, along with my partner Elizabeth Leff, represent Dey in the Delaware action that Sepracor brought against Dey regarding levalbuterol. We request that the March 7th deposition of Dr Leach proceed in NY, preferably at our offices. I expect to defend the deposition, while Elizabeth is at the hearing on Sepracor's motion, and I have an international flight out of New York later that day. I understand that Dey has made similar accommodations at Sepracor's request for deposition venue changes in this matter. Such flexibility does not inure only to Sepracor's benefit. Please confirm at your earliest convenience that Sepracor will proceed in NYC on the agreed-upon date for Dr Leach - thank you, Jeff Hovden

-----Original Message-----

From: Leff, Elizabeth  
Sent: Friday, February 29, 2008 6:21 PM  
To: 'prestonratliff@paulhastings.com'  
Subject: Re: Sepracor v. Dey

Preston:

The change in location was the result of having to juggle schedules because the hearing date for Sepracor's motion was set for the same date as the Dr Leach's deposition. I am trying to ascertain if it can be held in NY. I note that I didn't learn until thursday that Dr Mosberg's deposition was going to be in DC. We have tried to be flexible about your requests for changes in location and times. I ask that you give us the same courtesy.

Very truly yours,  
Elizabeth Leff

-----  
Elizabeth A. Leff, Esq.  
Frommer Lawrence & Haug LLP  
1667 K Street N.W.  
Washington, DC 20005

Tel: 202-292-1530

[www.FLHLaw.com](http://www.FLHLaw.com)  
ELeff@FLHLaw.com

-----Original Message-----

From: Ratliff, Preston K. <prestonratliff@paulhastings.com>  
To: Leff, Elizabeth <ELeff@flhllaw.com>  
Sent: Fri Feb 29 17:55:06 2008  
Subject: RE: Sepracor v. Dey

Elizabeth,

Your January 31, 2008 letter to me (attached to this e-mail) confirms that Dr. Leach will be deposed in D.C. on Friday, March 7, 2008. If your e-mail below is your way of saying that Dr. Leach is no longer available for deposition in D.C. on March 7, Dey may very well need to find another day for Sepracor to take his deposition. Please let me know immediately.

Very truly yours,

Preston

From: Leff, Elizabeth [mailto:[ELeff@flhllaw.com](mailto:ELeff@flhllaw.com)]  
Sent: Friday, February 29, 2008 5:08 PM  
To: Ratliff, Preston K.  
Subject: RE: Sepracor v. Dey

Preston:

Dr. Leach's deposition will take place in NY not DC. I will get back to you on the time.

Very truly yours,

Elizabeth Leff

---

From: Ratliff, Preston K. [mailto:[prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com)]  
Sent: Friday, February 29, 2008 5:01 PM  
To: Leff, Elizabeth  
Subject: Sepracor v. Dey

Elizabeth,

Please reply to confirm that the deposition of Dey's expert, Chet Leach, is scheduled to commence at Paul Hastings' offices at 875 15th Street, NW, Washington DC and that the witness will be ready to start on the record at 9:00 am. When the witness arrives, please call Lenette Wilson at x1952.

Very truly yours,

Preston

---

---

Preston K. Ratliff II, Litigation Associate | Paul, Hastings, Janofsky & Walker LLP | 75 East 55th Street, New York, NY 10022 | direct: 212 318 6055 | main: 212 318-6000 | direct fax: 212 230 7742 | [prestonratliff@paulhastings.com](mailto:prestonratliff@paulhastings.com) | [www.paulhastings.com](http://www.paulhastings.com) | <http://www.paulhastings.com/>

---

\*\*\*\*\*

IRS Circular 230 Disclosure: As required by U.S.

Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.

\*\*\*\*\*

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

**Leff, Elizabeth**

---

**From:** Hovden, Jeffrey  
**Sent:** Monday, March 03, 2008 8:52 PM  
**To:** 'Clancy, Quinn E.'  
**Cc:** Ratliff, Preston K.; Leff, Elizabeth  
**Subject:** RE: Sepracor v. Dey

This confirms we shall proceed as detailed below - Jeff Hovden

---

**From:** Clancy, Quinn E. [mailto:[quinnclancy@paulhastings.com](mailto:quinnclancy@paulhastings.com)]  
**Sent:** Monday, March 03, 2008 8:46 PM  
**To:** Hovden, Jeffrey  
**Cc:** Ratliff, Preston K.; Leff, Elizabeth  
**Subject:** Sepracor v. Dey

Mr. Hovden -

Please reply to confirm that the deposition of Dey's expert, Chet Leach, is scheduled to commence on March 7, 2008 at Paul Hastings' offices at 75 East 55th St., New York, NY, and that the witness will be ready to start on the record at 9:00 am.

Very truly yours,  
Quinn Clancy

---

Quinn E. Clancy, Litigation Associate | Paul, Hastings, Janofsky & Walker LLP | 75 East 55th Street, New York, NY 10022 | direct: 212 318 6206 | main: 212 318 6000 | direct fax: 212 230 7708 | [quinnclancy@paulhastings.com](mailto:quinnclancy@paulhastings.com) | [www.paulhastings.com](http://www.paulhastings.com)

---

\*\*\*\*\*  
IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.

---

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at [www.paulhastings.com](http://www.paulhastings.com).